

AUTO COLLISION REPAIR LICENSING ADVISORY BOARD

*****SPECIAL MEETING*****

MEETING MINUTES FOR NOVEMBER 19, 2008

Members present: Dave Reynolds – Chairman

Gerald Galleshaw, Representing the people

Dan Coleman, Auto Glass Industry

Charles Nystedt, MetLife Home,

Dennis Gamba, Cranston Collision

Richard Bernstein, Legal Counsel – DBR

Members absent: Corporal Dave Doucet, State Police

Paul Kiernan

Others present: Maria D'Alessandro, Associate Director

Neena Sinha Savage, Chief of Legal Services

Kim Precious, Implementation Aide

Tom Broderick, Chief Public Protection Inspector

Larry Alan, Nationwide Mutual

Jodi Bourque, Nixon Peabody

Jina Petrarca-Karampetsos, Providence Auto Body

Randy Bottella, Reliable Collision

Patrick Quinlin

Bill Burke, Progressive Ins.

Lloyd Albert, AAA Glass

Brent Golden, AAA Glass

Chad Flowers, Safelite Auto Glass

David Rosenberg, Safelite Auto Glass

MEETING CALLED TO ORDER AT: 9:45

Maria D'Alessandro – Associate Director of Commercial Licensing and Racing and Athletics: called this Special Meeting to address concerns regarding certain matters that were raised at the Auto Body Advisory Board meeting on October 29, 2008. As everyone is aware, it is critical that the Department and the Board have a good working relationship and that all business be conducted in compliance with statutory and regulatory mandates.

Neena Sinha Savage, Chief of Legal Services: I have been with the Department for almost 12 years and generally give advice on compliance in regard to a wide variety of issues i.e.: open meetings, access to public records, protocols for handling investigations and complaints. My understanding is that there was some discussion at the last meeting on whether or not certain matters should be discussed in executive session or if it was optional. Given the issues that were being discussed at that time, it is not an option, for a number of reasons. Investigatory matters for the department are not public until we issue a final order. You are an advisory board for the department. We rely upon the board for your expertise. In 2005 the board at that time started reviewing special use licenses, and it was

my recommendation, that we go into executive session, because we did not want to disclose any complaints or investigations regarding our licensees until we've determined an action was going to be taken.

We want to protect the reputation and the records of our licensees, and we don't want to give frivolous complaints undo validity by discussing them in public. Recently a matter came before the board that we need your expertise on. We are not auto body people, and we don't repair cars. We need the work that you do to be in compliance, because if it is not in compliance with open meetings, any action that we take could be subject to appeal, and be challenged thereafter. As a regulatory agency we want to comply with the statute.

Randy: You mentioned having an investigation be put into a closed session. At what point would the department start a formal investigation.

Neena: At the point where it involves a specific licensee or an applicant where we haven't made a final determination and we are doing fact gathering.

Maria: It could be anybody, licensed or not, who is potentially violating the statute.

Neena: Violation of statute or a licensee who has proprietary information.

Dave: I don't get that from 42-46.

Neena: In 42-46, there is a section on investigative proceedings regarding allegations of civil or criminal misconduct. We are also required to comply with RIGL 38-2-1 Access to Public Records, which states that, until final determination is made by the department, which is an order to show cause. We schedule a hearing where we say to the licensee, you violated a statute or you haven't, or we issue an order to show cause denying a license application. All information before that is investigatory.

Maria: It is also important should there be an allegation of unlicensed activity of a non-licensee and the board or the department find that there is no violation then that never becomes a public record. That remains investigatory because no action was taken.

Dave: When an investigation is taking place we are looking for information, that information may be in some way shape or form, a hazard to the public's state of health.

Neena: Say you discussed that in open session and there are public members present and they hear, XYZ Auto Body is doing something that is a risk to the public health. They tell someone and someone tells someone else. There is no final action. But the business could be impacted. So that is the reason for it to be in a closed session.

Dave: We are not talking specifics we are talking about generalities. There is a different type of business that is going to be looking to get a license in Rhode Island and some of the techniques they employ are questionable.

Neena: Right, but why do you need to do that in open session verses closed session.

Dave: If we shut the public out and something takes place then we could be held responsible. We could be sued.

Neena: The Attorney General could also sue us if we don't follow procedures to comply with access to open records act. We have enough expertise within the board that you can determine what questions you need to ask, what needs to be discussed and then make a recommendation to the department. Once you make a recommendation to the department then the department has to do its own due diligence and we might come back to the board and ask specific questions. You can only give your best recommendation and we can only do our best and ultimately when we choose to take an action whether it be to deny or to accept, the licensee has a right to a hearing and that will play out in the public forum. The reason we appoint a hearing officer often is we don't know the right answer or the applicant has a different position. We just want to be cautious at the beginning stages.

Richard: What other boards do is save all of the specific licensee issues to go into executive session either at the beginning or at the end of the meeting.

Dennis: When we are in a closed session, and we feel because of the nature of the case that we are viewing, that we want to bring in an expert witness, that we feel should be part of this, how is that established. Is it within the guidelines?

Neena: I think it can be and you can get the applicant's permission. You have a right to bring in a witness as long as in front of that witness you are not sharing other information. You can call in an expert and ask questions.

Jodi: An expert is an expert beyond what everybody else on the board knows.

Charles: When considering a licensee's application or talking about a specific licensee and you want to bring someone in who knows something about that end of the business, you could certainly invite them in to speak without talking about the specifics of that application. You could say tell us how "x" is done and then, thank you; you can leave the room now. I don't see the need to go into executive session unless you are specifically considering an application and deciding to render some sort of recommendation to DBR on that application.

Neena: A specific application should be in closed session.

We don't bring our applications here. The applications get handled within the department. We don't bring in any of those issues unless we need your expertise on a specific technical issue.

Dennis: To protect myself from ramifications when we go into a closed session, can I stop the process and invite my attorney.

Neena: We can't anticipate every situation. If you are in a meeting and an issue comes up and you are not sure, we have two or three lawyers here.

Dennis: I just want to be clear about it. Am I liable or am I not liable to go into executive session or is the state liable for what I am doing. Before we go into a next session or an executive session I would like to have that answer.

Neena: We can ask the AG.

Jodi: Is an application for a license a public record or just part of it?

Neena: Part of it. Once a license is issued, it is a public record.

Maria: In other divisions the application itself and accompanying documents, excluding personal information, is in fact a public record.

So I would like to get a definitive answer.

Charles: The department does not bring all applications for auto body licensing before the board.

Neena: Only the Special Use Applications starting in 2005.

Charles: As a Board member, I would request that the department provide some type of written charge to the board on any particular special use application so we understand what we are doing.

Randy: Years ago there was only one license for body shops in the state. Regulations did not apply to all the different aspects of auto body. The Board made the determination that there would be a full collision repair license, a restoration and customization license, which covered people who were doing restoration kind of repair that, was separate from collision repair, and last was trucks and heavy equipment. Those three types comprise 95% of the people who were licensed. The remaining 5% percent would come under a special use because of those little niches not covered. When the Board is trying to make a recommendation on something that has not been done before, there is a ton of fact-finding information that doesn't have to do specifically with that one applicant. It has to do with an entire segment of the industry that we are unfamiliar with, and we need to go over all the ramifications before we can give an intelligent recommendation to the director. I would say that when we have those

types of situations, it would be helpful to ask the person who is making the application if they will allow it to be put into a public forum. I would say it would be up to the applicant to decide if they are comfortable with it being open, especially in a situation where the board has to come up with recommendation for regulations for something that is nothing like anything we ever had. You have to expect there is a lot of research to be done. You can't set a timetable on that.

Maria: Correct me if I'm wrong, but what you are asking is, if the applicant has no issues having the application viewed in open session than would that applicant be exempt from executive session? I'm not sure we can answer that without the advice of the Attorney General's office.

Randy: The last time the Board had to make a recommendation for a special use license, the applicant turned in their application as well a description of why they didn't fit into one of the classifications of licensing. The only part of that application the board saw was the explanation of what they do. Our only concern was why they didn't fit into a traditional license and from there made recommendations of what would be necessary.

Jodi: So the issue is, part of the application could be public, and a portion of it could be either in Executive Session or not before the board at all.

Neena: We will try to clear this up as quickly as we can. Thank you.

Dave Reynolds: Made a motion to adjourn. Seconded by CN.